

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 2, 2003

In Reply Refer To:  
Docket No. ER02-1420-009

Duane Morris, LLP  
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Attn: Stephen L. Teacher, Esq.  
Attorney for Midwest Independent Transmission  
System Operator, Inc.

Dear Mr. Teacher:

1. On April 4, 2003, you submitted on behalf of Midwest Independent Transmission System Operator, Inc. (Midwest ISO) in Docket No. ER02-1420-009, a Motion to Withdraw the Resulting Company<sup>1</sup> Open Excess Transmission Tariff (Resulting Company Tariff) and the Resulting Company Agreement (Resulting Company Agreement).

**Background**

2. On March 29, 2002, the Midwest ISO filed with the Commission certain documents to effectuate the incorporation of the transmission-owning members of SPP into the Midwest ISO. Such documents included a Purchase and Assumption Agreement between the parties which contained the Resulting Company Tariff and the Resulting

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<sup>1</sup>The term "Resulting Company" refers to the company that would have resulted from the consummation of the business combination between the Midwest ISO and the Southwest Power Pool, Inc. (SPP).

Company Agreement. These were conditionally accepted by the Commission on May 31, 2002.<sup>2</sup> In compliance with the Merger Order, Midwest ISO filed a single consolidated Resulting Company Tariff.<sup>3</sup>

3. Subsequently, on March 20, 2003, Midwest ISO notified Commission Staff that the Boards of Directors of the Midwest ISO and SPP had voted to terminate the combination of the two entities.

4. As the business combination upon which the Resulting Company Tariff and the Resulting Company Agreement were predicated has been terminated, in its request for withdrawal, Midwest ISO asserts the Resulting Company Tariff and Resulting Company Agreement are also moot and should be withdrawn.

### **Notice of Filing and Pleading**

5. Notice of the filing was published in the Federal Register, 68 Fed. Reg. 27550 (2003), with comments, protests, and interventions due on or before May 22, 2003. A timely motion to intervene with comments was filed by Xcel Energy Services Inc. (Xcel) on behalf of Northern States Power Company, Northern States Power Company (Wisconsin) and Southwestern Public Service Company.

6. Xcel does not ask the Commission to deny the withdrawal of the Resulting Company Tariff. Xcel, however, expresses its disappointment that the proposed merger between Midwest ISO and SPP has been cancelled and states its concern with the implications of the merger termination on electric supply markets and costs as well as RTO administration costs.

### **Discussion**

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>4</sup> the timely, unopposed motion to intervene serves to make Xcel a party to this proceeding.

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<sup>2</sup>See Midwest Independent Transmission System Operator, Inc., 99 FERC ¶ 61,250, (2002), reh'g denied, 101 FERC ¶ 61,044 (2002) (Merger Order).

<sup>3</sup>See Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,319 (2002) (December 19 Order).

<sup>4</sup>18 C.F.R. § 385.214 (2003).

8. The Commission's practice is to treat the withdrawal of rate filings as filings under Federal Power Act Section 205, 16 U.S.C. § 824d (2000), and to act on them accordingly.<sup>5</sup> Because the business combination upon which the Resulting Company Tariff and Resulting Company Agreement were predicated has been terminated, such agreements are now moot. Accordingly, we will grant Midwest ISO's withdrawal request.

9. Xcel's concerns regarding Midwest ISO and SPP's failed merger plans are beyond the scope of this proceeding (i.e., a request to withdraw the Resulting Company Tariff and Resulting Company Agreement). Accordingly, we need not address Xcel's concerns at this time.

By direction of the Commission.

Magalie R. Salas,  
Secretary.

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<sup>5</sup>See e.g., California Independent System Operator Corporation, 90 FERC ¶ 61,337 at 62,119 (2000).